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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CHIQUITA FRESH, N.A., L.L.C.

Plaintiff

v.

SAMMY'S PRODUCE, INC., et al

Defendants

Civil Action No: 08-CV714 JLS(POR)

**DECLARATION IN SUPPORT  
OF APPLICATIONS FOR  
TEMPORARY RESTRAINING  
ORDER WITH NOTICE  
AND PRELIMINARY INJUNCTION**

Joe Beckman, being duly sworn, deposes and says:

1. I am a credit and collections specialist of Chiquita Fresh, N.A., L.L.C. ("Chiquita"), and make this Affidavit in support of an application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this declaration are within my personal knowledge. If called upon as a witness, I would and could competently testify to all facts stated in this declaration.

3. Chiquita is a limited liability corporation with a principal place of business in Cincinnati, Ohio, which sells wholesale quantities of perishable agricultural commodities (hereafter "produce"). Chiquita is a produce dealer subject to and licensed under the

1 Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a *et. seq.*  
2 (hereafter "PACA").

3 4. a. Sammy's Produce, Inc. ("Sammy's Produce") is a produce dealer as  
4 defined by 7 U.S.C. §499a and operates subject to and is licensed under the PACA.

5 b. Upon information and belief, Yan Skwara, Samuel V. Nucci and  
6 Darin Pines are and were responsible for the day-to-day operations of Sammy's Produce  
7 during the time in question and were in a position of control over the PACA trust assets  
8 belonging to Chiquita.

9 5. The sales and accounts receivable records of Chiquita including invoices  
10 and account statements, are made in the ordinary course of business and are made at  
11 or near the time of the occurrence of the event of which they are a record. These  
12 business records are made by me or under my direction and supervision by  
13 employees whose duty it is to prepare such documents.

14 6. My responsibilities include monitoring the sale of produce, including  
15 those sales that are the subject of this dispute. My responsibilities also include  
16 supervising collection of the accounts receivable for such sales, including Sammy's  
17 Produce's account which is the subject of the present application. I have custody and  
18 control of the sales and accounts receivable records of Chiquita as they relate to  
19 Sammy's Produce and I am thoroughly familiar with the manner in which those records  
20 are compiled.

21 7. Between February 15, 2008 and March 12, 2008, Chiquita sold and  
22 delivered to defendants, in interstate commerce, various wholesale lots of produce worth  
23 \$73,545.90 which remains unpaid. (Copies of the outstanding invoices are attached  
24 hereto as Exhibit 1.)

25 8. Defendants accepted the produce received from Chiquita.

26 9. Chiquita preserved its interest in the PACA trust in the amount of  
27 \$73,545.90 by timely delivering invoices to defendants, which contained the language  
28

1 required under Section 5(c) of the Perishable Agricultural Commodities Act ("PACA"), 7  
2 U.S.C. §499e(c). (See Exhibit 1 attached hereto.)

3 10. Defendants are obligated to hold in trust all produce-related assets  
4 received from the sale of produce in order to pay \$73,545.90 to Chiquita.

5 11. On April 10, 2008, I spoke with Tiffany in the accounts payable department  
6 of Sammy's Produce to request payment. Tiffany told me that Sammy's Produce was  
7 having severe cash flow problems and under strict orders from management not to pay  
8 any invoices. Tiffany then told me that she was not sure if and when payment would be  
9 made to Chiquita.

10 12. Defendants' failure, refusal and inability to pay, demonstrate that  
11 defendants are failing to maintain sufficient assets in the statutory trust, and are  
12 dissipating assets.

13 13. Unless the assets of the defendant corporation are frozen, it is likely the  
14 trust assets will continue to be dissipated. As a result, Chiquita will suffer immediate and  
15 irreparable harm because it will lose the trust assets and rights that are owed under the  
16 statute.

17 14. No provisional remedy has been secured or sought in this action, and no  
18 prior application has been made for the same or similar relief as is sought herein.

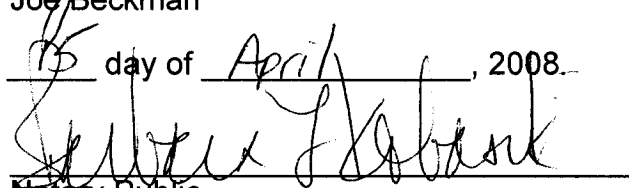
19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on April 15<sup>th</sup>, 2008

21 CHIQUITA FRESH, N.A., L.L.C.

22   
23 Joe Beckman

24 Subscribed and sworn to before me this 15 day of April, 2008.

25   
26 Notary Public

27 My commission expires: 9-4-2012

2/13/08

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## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

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CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

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SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

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SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/13/08	NET 10	2/24/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
84	CU	CU	CUCUMBER 30V CQ	PL	5.85	491.40
84	Total				SALES AMOUNT	491.40
					OTHER COST AMOUNT	
REMARKS	CURRENCY USD				TOTAL AMOUNT DUE: 491.40	

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499a(c)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES. ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

2/15/08

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## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

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CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

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SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

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SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

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PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/15/08	NET 10	2/25/08	

QUANT.	PRODUCT CODE			PRICE PER	AMOUNT
790	TM	TM	ROMA TOMATO 25V CQ SM	5.85	4,621.50
790	Total			SALES AMOUNT	4,621.50
				OTHER COST AMOUNT	

REMARKS	CURRENCY USD	TOTAL AMOUNT DUE: 4,621.50
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THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(d) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499a(d)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

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2/20/08

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## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
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SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/20/08	NET 10	3/02/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
84	CU	CU	CUCUMBER		8.95	751.80
			30V CQ	PL		
1056	TM	TM	TOMATO		8.95	9,451.20
			25V CQ	4X4		
264	TM	TM	TOMATO		8.95	2,362.80
			25V CQ	4X5		
175	TM	TM	TOMATO		10.95	1,916.25
			25V CQ	5X5		
1579	Total				SALES AMOUNT	14,482.05
					OTHER COST AMOUNT	

REMARKS	CURRENCY USD	TOTAL AMOUNT DUE: 14,482.05
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THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(a) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499a(c)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES. ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

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2/21/08

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## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

REMITTANCE TO

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

SOLD TO

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SHIP TO

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

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PLEASE CORRECT ON REMITTANCE COPY

SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/21/08	NET 10	3/03/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
98	PP	GP	GREEN PEPPER		6.95	681.10
			30V CQ CHOIC			
800	TM	TM	ROMA TOMATO		7.95	6,360.00
			25V CQ MD			
560	TM	TM	ROMA TOMATO		8.95	5,012.00
			25V NC LG			
1458	Total				SALES AMOUNT	12,053.10
					OTHER COST AMOUNT	

REMARKS	CURRENCY USD	TOTAL AMOUNT DUE: 12,053.10
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THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(p) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499a(p)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SAMMY'S PRODUCE  
1280 N. MELROSE  
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VISTA, CA 92083

SAMMYCA

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SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/26/08	NET 10	3/08/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
240	TM	TM	ROMA TOMATO		10.95	2,628.00
			25V CQ MD			
176	TM	TM	TOMATO		10.95	1,927.20
			25V CQ 3X4			
88	TM	TM	TOMATO		10.95	963.60
			25V CQ 4X5			
176	TM	TM	TOMATO		10.95	1,927.20
			25V CQ 5X5			
176	TM	TM	TOMATO		10.95	1,927.20
			25V CQ 5X6			
856	Total				SALES AMOUNT	9,373.20
					OTHER COST AMOUNT	

REMARKS	CURRENCY USD	TOTAL AMOUNT DUE: 9,373.20
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THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(d) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499a(d)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES. ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES, UNTIL FULL PAYMENT IS RECEIVED.

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2/29/08

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## INVOICE



Page 1

Chiquita Fresh North America L.L.C.

REMITTANCE TO

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

SOLD TO

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SHIP TO

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/29/08	NET 10	3/15/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
480	TM	TM	ROMA TOMATO		8.95	4,296.00
			25V CQ MD			
352	TM	TM	TOMATO		8.95	3,150.40
			25V NC 4X5			
440	TM	TM	TOMATO		8.95	3,938.00
			25V NC 5X5			
49	SQ	SQ	GREEN SQ (ITAL)		3.95	193.55
			23V CQ LG			
80	SQ	SQ	GREEN SQ (ITAL)		3.95	316.00
			23V CQ MD			
239	SQ	SQ	GREEN SQ (ITAL)		3.95	944.05
			23V CQ XF			
1640	Total				SALES AMOUNT	12,838.00
					OTHER COST AMOUNT	

REMARKS

CURRENCY USD

TOTAL AMOUNT DUE: 12,838.00

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3/04/08

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## INVOICE



Page 1

REMITTANCE

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

Chiquita Fresh North America L.L.C.

SOLD TO

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SHIP TO

SAMMY'S PRODUCE  
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VISTA, CA 92083

SAMMYCA

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PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	3/04/08	NET 10	3/15/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
146	TM	TM	TOMATO		8.95	1,306.70
			25V NC	4X4		
616	TM	TM	TOMATO		8.95	5,513.20
			25V NC	4X5		
606	TM	TM	TOMATO		8.95	5,423.70
			25V NC	5X5		
323	TM	TM	TOMATO		8.95	2,890.85
			25V NC	5X6		
1691	Total				SALES AMOUNT	15,134.45
					OTHER COST AMOUNT	

REMARKS

CURRENCY USD

TOTAL AMOUNT DUE: 15,134.45

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3/05/08

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## INVOICE



Page 1

CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000

Chiquita Fresh North America L.L.C.

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

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SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	3/05/08	NET 10	3/22/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
126	CU	CU	CUCUMBER		6.95	875.70
			30V CQ PL			
408	TM	TM	CHERRY TOMATO		3.05	1,244.40
			22V CQ XL			
480	TM	TM	ROMA TOMATO		6.95	3,336.00
			25V CQ LG			
640	TM	TM	ROMA TOMATO		5.95	3,808.00
			25V CQ MD			
1654	Total				SALES AMOUNT	9,264.10
					OTHER COST AMOUNT	

REMARKS

CURRENCY USD

TOTAL AMOUNT DUE: 9,264.10

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TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE